

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 892

Introduced by Senator Alquist

January 25, 2010

An act to amend Section ~~1558~~ *1569.17* of the Health and Safety Code, relating to ~~health and~~ care facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 892, as amended, Alquist. ~~Community care~~ Care facilities.

Existing law, the California Residential Care Facilities for the Elderly Act, provides for the licensure of residential care facilities by the department.

Existing law requires a criminal record check of applicants for a license, special permit, or certificate of approval to operate a residential care facility for the elderly, or for other persons, including nonclients who reside in those facilities and staff and employees. Existing law requires that an application be denied if it is found that the applicant or any of the other designated persons has been convicted of a crime, other than a minor traffic violation. Existing law authorizes the Director of Social Services to grant an exemption from disqualification under these provisions, but prohibits the director from granting an exemption in the case of certain crimes.

This bill would add additional specified crimes with respect to which the director is prohibited from granting an exemption.

~~Existing law, the California Community Care Facilities Act, provides for the licensure and regulation of community care and residential facilities by the State Department of Social Services.~~

~~This bill would make technical, nonsubstantive changes to a provision of that act.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1569.17 of the Health and Safety Code
2 is amended to read:
3 1569.17. The Legislature recognizes the need to generate timely
4 and accurate positive fingerprint identification of applicants as a
5 condition of issuing licenses, permits, or certificates of approval
6 for persons to operate or provide direct care services in a residential
7 care facility for the elderly. It is the intent of the Legislature in
8 enacting this section to require the fingerprints of those individuals
9 whose contact with clients of residential care facilities for the
10 elderly may pose a risk to the clients' health and safety. An
11 individual shall be required to obtain either a criminal record
12 clearance or a criminal record exemption from the State Department
13 of Social Services before his or her initial presence in a residential
14 care facility for the elderly.

15 (a) (1) Before issuing a license to any person or persons to
16 operate or manage a residential care facility for the elderly, the
17 department shall secure from an appropriate law enforcement
18 agency a criminal record to determine whether the applicant or
19 any other person specified in subdivision (b) has ever been
20 convicted of a crime other than a minor traffic violation or arrested
21 for any crime specified in subdivision (c) of Section 290 of the
22 Penal Code, for violating Section 245 or 273.5, subdivision (b) of
23 Section 273a or, prior to January 1, 1994, paragraph (2) of Section
24 273a of the Penal Code, or for any crime for which the department
25 cannot grant an exemption if the person was convicted and the
26 person has not been exonerated.

27 (2) The criminal history information shall include the full
28 criminal record, if any, of those persons, and subsequent arrest
29 information pursuant to Section 11105.2 of the Penal Code.

30 (3) The following shall apply to the criminal record information:
31 (A) If the State Department of Social Services finds that the
32 applicant or any other person specified in subdivision (b) has been
33 convicted of a crime, other than a minor traffic violation, the
34 application shall be denied, unless the director grants an exemption
35 pursuant to subdivision (f).

1 (B) If the State Department of Social Services finds that the
2 applicant, or any other person specified in subdivision (b) is
3 awaiting trial for a crime other than a minor traffic violation, the
4 State Department of Social Services may cease processing the
5 application until the conclusion of the trial.

6 (C) If no criminal record information has been recorded, the
7 Department of Justice shall provide the applicant and the State
8 Department of Social Services with a statement of that fact.

9 (D) If the State Department of Social Services finds after
10 licensure that the licensee, or any other person specified in
11 paragraph (2) of subdivision (b), has been convicted of a crime
12 other than a minor traffic violation, the license may be revoked,
13 unless the director grants an exemption pursuant to subdivision
14 (f).

15 (E) An applicant and any other person specified in subdivision
16 (b) shall submit fingerprint images and related information to the
17 Department of Justice and the Federal Bureau of Investigation,
18 through the Department of Justice, for a state and federal level
19 criminal offender record information search, in addition to the
20 search required by subdivision (a). If an applicant meets all other
21 conditions for licensure, except receipt of the Federal Bureau of
22 Investigation's criminal history information for the applicant and
23 persons listed in subdivision (b), the department may issue a license
24 if the applicant and each person described by subdivision (b) has
25 signed and submitted a statement that he or she has never been
26 convicted of a crime in the United States, other than a traffic
27 infraction as defined in paragraph (1) of subdivision (a) of Section
28 42001 of the Vehicle Code. If, after licensure, the department
29 determines that the licensee or person specified in subdivision (b)
30 has a criminal record, the license may be revoked pursuant to
31 Section 1569.50. The department may also suspend the license
32 pending an administrative hearing pursuant to Sections 1569.50
33 and 1569.51.

34 (b) In addition to the applicant, the provisions of this section
35 shall apply to criminal convictions of the following persons:

36 (1) (A) Adults responsible for administration or direct
37 supervision of staff.

38 (B) Any person, other than a client, residing in the facility.
39 Residents of unlicensed independent senior housing facilities that
40 are located in contiguous buildings on the same property as a

1 residential care facility for the elderly shall be exempt from these
2 requirements.

3 (C) Any person who provides client assistance in dressing,
4 grooming, bathing, or personal hygiene. Any nurse assistant or
5 home health aide meeting the requirements of Section 1338.5 or
6 1736.6, respectively, who is not employed, retained, or contracted
7 by the licensee, and who has been certified or recertified on or
8 after July 1, 1998, shall be deemed to meet the criminal record
9 clearance requirements of this section. A certified nurse assistant
10 and certified home health aide who will be providing client
11 assistance and who falls under this exemption shall provide one
12 copy of his or her current certification, prior to providing care, to
13 the residential care facility for the elderly. The facility shall
14 maintain the copy of the certification on file as long as the care is
15 being provided by the certified nurse assistant or certified home
16 health aide at the facility. Nothing in this paragraph restricts the
17 right of the department to exclude a certified nurse assistant or
18 certified home health aide from a licensed residential care facility
19 for the elderly pursuant to Section 1569.58.

20 (D) Any staff person, volunteer, or employee who has contact
21 with the clients.

22 (E) If the applicant is a firm, partnership, association, or
23 corporation, the chief executive officer or other person serving in
24 a similar capacity.

25 (F) Additional officers of the governing body of the applicant
26 or other persons with a financial interest in the applicant, as
27 determined necessary by the department by regulation. The criteria
28 used in the development of these regulations shall be based on the
29 person's capability to exercise substantial influence over the
30 operation of the facility.

31 (2) The following persons are exempt from requirements
32 applicable under paragraph (1):

33 (A) A spouse, relative, significant other, or close friend of a
34 client shall be exempt if this person is visiting the client or provides
35 direct care and supervision to that client only.

36 (B) A volunteer to whom all of the following apply:

37 (i) The volunteer is at the facility during normal waking hours.

38 (ii) The volunteer is directly supervised by the licensee or a
39 facility employee with a criminal record clearance or exemption.

1 (iii) The volunteer spends no more than 16 hours per week at
2 the facility.

3 (iv) The volunteer does not provide clients with assistance in
4 dressing, grooming, bathing, or personal hygiene.

5 (v) The volunteer is not left alone with clients in care.

6 (C) A third-party contractor retained by the facility if the
7 contractor is not left alone with clients in care.

8 (D) A third-party contractor or other business professional
9 retained by a client and at the facility at the request or by
10 permission of that client. These individuals may not be left alone
11 with other clients.

12 (E) Licensed or certified medical professionals are exempt from
13 fingerprint and criminal background check requirements imposed
14 by community care licensing. This exemption does not apply to a
15 person who is a community care facility licensee or an employee
16 of the facility.

17 (F) Employees of licensed home health agencies and members
18 of licensed hospice interdisciplinary teams who have contact with
19 a resident of a residential care facility at the request of the resident
20 or resident's legal decisionmaker are exempt from fingerprint and
21 criminal background check requirements imposed by community
22 care licensing. This exemption does not apply to a person who is
23 a community care facility licensee or an employee of the facility.

24 (G) Clergy and other spiritual caregivers who are performing
25 services in common areas of the residential care facility, or who
26 are advising an individual resident at the request of, or with
27 permission of, the resident, are exempt from fingerprint and
28 criminal background check requirements imposed by community
29 care licensing. This exemption does not apply to a person who is
30 a community care facility licensee or an employee of the facility.

31 (H) Any person similar to those described in this subdivision,
32 as defined by the department in regulations.

33 (I) Nothing in this paragraph shall prevent a licensee from
34 requiring a criminal record clearance of any individual exempt
35 from the requirements of this section, provided that the individual
36 has client contact.

37 (c) (1) (A) Subsequent to initial licensure, any person required
38 to be fingerprinted pursuant to subdivision (b) shall, as a condition
39 to employment, residence, or presence in a residential facility for
40 the elderly, be fingerprinted and sign a declaration under penalty

1 of perjury regarding any prior criminal convictions. The licensee
2 shall submit these fingerprint images and related information to
3 the Department of Justice and the Federal Bureau of Investigation,
4 through the Department of Justice, for a state and federal level
5 criminal offender record information search, or to comply with
6 paragraph (1) of subdivision (g) prior to the person's employment,
7 residence, or initial presence in the residential care facility for the
8 elderly.

9 (B) These fingerprint images and related information shall be
10 electronically transmitted in a manner approved by the State
11 Department of Social Services and the Department of Justice. A
12 licensee's failure to submit fingerprint images and related
13 information to the Department of Justice, or to comply with
14 paragraph (1) of subdivision (g), as required in this section, shall
15 result in the citation of a deficiency and an immediate assessment
16 of civil penalties in the amount of one hundred dollars (\$100) per
17 violation per day for a maximum of five days, unless the violation
18 is a second or subsequent violation within a 12-month period in
19 which case the civil penalties shall be in the amount of one hundred
20 dollars (\$100) per violation for a maximum of 30 days, and shall
21 be grounds for disciplining the licensee pursuant to Section
22 1569.50. The State Department of Social Services may assess civil
23 penalties for continued violations as permitted by Section 1569.49.
24 The licensee shall then submit these fingerprint images to the State
25 Department of Social Services for processing. Documentation of
26 the individual's clearance or exemption shall be maintained by the
27 licensee and be available for inspection. The Department of Justice
28 shall notify the department, as required by Section 1522.04, and
29 notify the licensee by mail within 14 days of electronic
30 transmission of the fingerprints to the Department of Justice, if
31 the person has no criminal record. A violation of the regulations
32 adopted pursuant to Section 1522.04 shall result in the citation of
33 a deficiency and an immediate assessment of civil penalties in the
34 amount of one hundred dollars (\$100) per violation per day for a
35 maximum of five days, unless the violation is a second or
36 subsequent violation within a 12-month period in which case the
37 civil penalties shall be in the amount of one hundred dollars (\$100)
38 per violation for a maximum of 30 days, and shall be grounds for
39 disciplining the licensee pursuant to Section 1569.50. The

1 department may assess civil penalties for continued violations as
2 permitted by Section 1569.49.

3 (2) Within 14 calendar days of the receipt of the fingerprint
4 images, the Department of Justice shall notify the State Department
5 of Social Services of the criminal record information, as provided
6 for in this subdivision. If no criminal record information has been
7 recorded, the Department of Justice shall provide the licensee and
8 the State Department of Social Services with a statement of that
9 fact within 14 calendar days of receipt of the fingerprint images.
10 If new fingerprint images are required for processing, the
11 Department of Justice shall, within 14 calendar days from the date
12 of receipt of the fingerprint images, notify the licensee that the
13 fingerprint images were illegible.

14 (3) Except for persons specified in paragraph (2) of subdivision
15 (b), the licensee shall endeavor to ascertain the previous
16 employment history of persons required to be fingerprinted under
17 this subdivision. If the State Department of Social Services
18 determines, on the basis of the fingerprint images submitted to the
19 Department of Justice, that the person has been convicted of a sex
20 offense against a minor, an offense specified in Section 243.4,
21 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State
22 Department of Social Services shall notify the licensee in writing
23 within 15 calendar days of the receipt of the notification from the
24 Department of Justice to act immediately to terminate the person's
25 employment, remove the person from the residential care facility
26 for the elderly, or bar the person from entering the residential care
27 facility for the elderly. The State Department of Social Services
28 may subsequently grant an exemption pursuant to subdivision (f).
29 If the conviction was for another crime, except a minor traffic
30 violation, the licensee shall, upon notification by the State
31 Department of Social Services, act immediately to either (1)
32 terminate the person's employment, remove the person from the
33 residential care facility for the elderly, or bar the person from
34 entering the residential care facility for the elderly or (2) seek an
35 exemption pursuant to subdivision (f). The department shall
36 determine if the person shall be allowed to remain in the facility
37 until a decision on the exemption is rendered by the department.
38 A licensee's failure to comply with the department's prohibition
39 of employment, contact with clients, or presence in the facility as
40 required by this paragraph shall result in a citation of deficiency

1 and an immediate assessment of civil penalties by the department
2 against the licensee, in the amount of one hundred dollars (\$100)
3 per violation per day for a maximum of five days, unless the
4 violation is a second or subsequent violation within a 12-month
5 period in which case the civil penalties shall be in the amount of
6 one hundred dollars (\$100) per violation for a maximum of 30
7 days, and shall be grounds for disciplining the licensee pursuant
8 to Section 1569.50.

9 (4) The department may issue an exemption on its own motion
10 pursuant to subdivision (f) if the person's criminal history indicates
11 that the person is of good character based on the age, seriousness,
12 and frequency of the conviction or convictions. The department,
13 in consultation with interested parties, shall develop regulations
14 to establish the criteria to grant an exemption pursuant to this
15 paragraph.

16 (5) Concurrently with notifying the licensee pursuant to
17 paragraph (4), the department shall notify the affected individual
18 of his or her right to seek an exemption pursuant to subdivision
19 (f). The individual may seek an exemption only if the licensee
20 terminates the person's employment or removes the person from
21 the facility after receiving notice from the department pursuant to
22 paragraph (4).

23 (d) (1) For purposes of this section or any other provision of
24 this chapter, a conviction means a plea or verdict of guilty or a
25 conviction following a plea of nolo contendere. Any action that
26 the department is permitted to take following the establishment of
27 a conviction may be taken when the time for appeal has elapsed,
28 when the judgment of conviction has been affirmed on appeal or
29 when an order granting probation is made suspending the
30 imposition of the sentence, notwithstanding a subsequent order
31 pursuant to the provisions of Sections 1203.4 and 1203.4a of the
32 Penal Code permitting a person to withdraw his or her plea of
33 guilty and to enter a plea of not guilty, or setting aside the verdict
34 of guilty, or dismissing the accusation, information, or indictment.
35 For purposes of this section or any other provision of this chapter,
36 the record of a conviction, or a copy thereof certified by the clerk
37 of the court or by a judge of the court in which the conviction
38 occurred, shall be conclusive evidence of the conviction. For
39 purposes of this section or any other provision of this chapter, the
40 arrest disposition report certified by the Department of Justice or

1 documents admissible in a criminal action pursuant to Section
2 969b of the Penal Code shall be prima facie evidence of the
3 conviction, notwithstanding any other provision of law prohibiting
4 the admission of these documents in a civil or administrative action.

5 (2) For purposes of this section or any other provision of this
6 chapter, the department shall consider criminal convictions from
7 another state or federal court as if the criminal offense was
8 committed in this state.

9 (e) The State Department of Social Services may not use a
10 record of arrest to deny, revoke, or terminate any application,
11 license, employment, or residence unless the department
12 investigates the incident and secures evidence, whether or not
13 related to the incident of arrest, that is admissible in an
14 administrative hearing to establish conduct by the person that may
15 pose a risk to the health and safety of any person who is or may
16 become a client. The State Department of Social Services is
17 authorized to obtain any arrest or conviction records or reports
18 from any law enforcement agency as necessary to the performance
19 of its duties to inspect, license, and investigate community care
20 facilities and individuals associated with a community care facility.

21 (f) (1) After review of the record, the director may grant an
22 exemption from disqualification for a license as specified in
23 paragraphs (1) and (4) of subdivision (a), or for employment,
24 residence, or presence in a residential care facility for the elderly
25 as specified in paragraphs (4), (5), and (6) of subdivision (c) if the
26 director has substantial and convincing evidence to support a
27 reasonable belief that the applicant and the person convicted of
28 the crime, if other than the applicant, are of such good character
29 as to justify issuance of the license or special permit or granting
30 an exemption for purposes of subdivision (c). However, an
31 exemption may not be granted pursuant to this subdivision if the
32 conviction was for any of the following offenses:

33 ~~(A) An offense specified in Section 220, 243.4, or 264.1,~~
34 ~~subdivision (a) of Section 273a or, prior to January 1, 1994,~~
35 ~~paragraph (1) of Section 273a, Section 273d, 288, or 289,~~
36 ~~subdivision (c) of Section 290, or Section 368 of the Penal Code,~~
37 ~~or was a conviction of another crime against an individual specified~~
38 ~~in subdivision (c) of Section 667.5 of the Penal Code. Section 187,~~
39 ~~subdivision (a) of Section 192, Section 203, 205, 206, 207, 209,~~
40 ~~210, 210.5, 211, 215, 220, 222, 243.4, 245, 261, 262, or 264.1,~~

1 Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285,
2 subdivisions (c), (d), (f), and (g) of Section 286, Section 288,
3 subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5,
4 289, or 289.5, subdivision (c) of Section 290, subdivision (a) of
5 Section 347, Section 368, subdivision (b) of Section 417, 451, 459,
6 470, 475, 484, or 484b, Sections 484d to 484j, inclusive, Section
7 487, 488, 496, 503, 518, or 666.

8 (B) A felony offense specified in Section 729 of the Business
9 and Professions Code ~~or Section 206 or 215, subdivision (a) of~~
10 ~~Section 347, subdivision (b) of Section 417, or subdivision (a) of~~
11 ~~Section 451 of the Penal Code.~~

12 (2) The director shall notify in writing the licensee or the
13 applicant of his or her decision within 60 days of receipt of all
14 information from the applicant and other sources determined
15 necessary by the director for the rendering of a decision pursuant
16 to this subdivision.

17 (3) The department may not prohibit a person from being
18 employed or having contact with clients in a facility on the basis
19 of a denied criminal record exemption request or arrest information
20 unless the department complies with the requirements of Section
21 1569.58.

22 (g) (1) For purposes of compliance with this section, the
23 department may permit an individual to transfer a current criminal
24 record clearance, as defined in subdivision (a), from one facility
25 to another, as long as the criminal record clearance has been
26 processed through a state licensing district office, and is being
27 transferred to another facility licensed by a state licensing district
28 office. The request shall be submitted in writing to the department,
29 and shall include a copy of the person's driver's license or valid
30 identification card issued by the Department of Motor Vehicles,
31 or a valid photo identification issued by another state or the United
32 States government if the person is not a California resident. Upon
33 request of the licensee, who shall enclose a self-addressed stamped
34 envelope for this purpose, the department shall verify whether the
35 individual has a clearance that can be transferred.

36 (2) The State Department of Social Services shall hold criminal
37 record clearances in its active files for a minimum of two years
38 after an employee is no longer employed at a licensed facility in
39 order for the criminal record clearances to be transferred under
40 this section.

1 (h) If a licensee or facility is required by law to deny
2 employment or to terminate employment of any employee based
3 on written notification from the department that the employee has
4 a prior criminal conviction or is determined unsuitable for
5 employment under Section 1569.58, the licensee or facility shall
6 not incur civil liability or unemployment insurance liability as a
7 result of that denial or termination.

8 (i) Notwithstanding any other ~~provision~~ of law, the department
9 may provide an individual with a copy of his or her state or federal
10 level criminal offender record information search response as
11 provided to that department by the Department of Justice if the
12 department has denied a criminal background clearance based on
13 this information and the individual makes a written request to the
14 department for a copy specifying an address to which it is to be
15 sent. The state or federal level criminal offender record information
16 search response shall not be modified or altered from its form or
17 content as provided by the Department of Justice and shall be
18 provided to the address specified by the individual in his or her
19 written request. The department shall retain a copy of the
20 individual's written request and the response and date provided.

21 *SEC. 2. The amendments to subdivision (f) of Section 1569.17*
22 *of the Health and Safety Code made by the act that added that*
23 *section shall not apply to any person who received an exemption*
24 *pursuant to that subdivision prior to January 1, 2011.*

25 ~~SECTION 1. Section 1558 of the Health and Safety Code is~~
26 ~~amended to read:~~

27 ~~1558. (a) The department may prohibit any person from being~~
28 ~~a member of the board of directors, an executive director, or an~~
29 ~~officer of a licensee, or a licensee from employing, or continuing~~
30 ~~the employment of, or allowing in a licensed facility, or allowing~~
31 ~~contact with clients of a licensed facility by, any employee,~~
32 ~~prospective employee, or person who is not a client who has:~~

33 ~~(1) Violated, or aided or permitted the violation by any other~~
34 ~~person of, any provisions of this chapter or of any rules or~~
35 ~~regulations promulgated under this chapter.~~

36 ~~(2) Engaged in conduct inimical to the health, morals, welfare,~~
37 ~~or safety of either an individual in or receiving services from the~~
38 ~~facility, or the people of the State of California.~~

1 ~~(3) Been denied an exemption to work or to be present in a~~
2 ~~facility, when that person has been convicted of a crime as defined~~
3 ~~in Section 1522.~~

4 ~~(4) Engaged in any other conduct that would constitute a basis~~
5 ~~for disciplining a licensee.~~

6 ~~(5) Engaged in acts of financial malfeasance concerning the~~
7 ~~operation of a facility, including, but not limited to, improper use~~
8 ~~or embezzlement of client moneys and property or fraudulent~~
9 ~~appropriation for personal gain of facility moneys and property,~~
10 ~~or willful or negligent failure to provide services.~~

11 ~~(b) The excluded person, the facility, and the licensee shall be~~
12 ~~given written notice of the basis of the department's action and of~~
13 ~~the excluded person's right to an appeal. The notice shall be served~~
14 ~~either by personal service or by registered mail. Within 15 days~~
15 ~~after the department serves the notice, the excluded person may~~
16 ~~file with the department a written appeal of the exclusion order.~~
17 ~~If the excluded person fails to file a written appeal within the~~
18 ~~prescribed time, the department's action shall be final.~~

19 ~~(e) (1) The department may require the immediate removal of~~
20 ~~a member of the board of directors, an executive director, or an~~
21 ~~officer of a licensee or exclusion of an employee, prospective~~
22 ~~employee, or person who is not a client from a facility pending a~~
23 ~~final decision of the matter, when, in the opinion of the director,~~
24 ~~the action is necessary to protect residents or clients from physical~~
25 ~~or mental abuse, abandonment, or any other substantial threat to~~
26 ~~their health or safety.~~

27 ~~(2) If the department requires the immediate removal of a~~
28 ~~member of the board of directors, an executive director, or an~~
29 ~~officer of a licensee or exclusion of an employee, prospective~~
30 ~~employee, or person who is not a client from a facility, the~~
31 ~~department shall serve an order of immediate exclusion upon the~~
32 ~~excluded person that shall notify the excluded person of the basis~~
33 ~~of the department's action and of the excluded person's right to a~~
34 ~~hearing.~~

35 ~~(3) Within 15 days after the department serves an order of~~
36 ~~immediate exclusion, the excluded person may file a written appeal~~
37 ~~of the exclusion with the department. The department's action~~
38 ~~shall be final if the excluded person does not appeal the exclusion~~
39 ~~within the prescribed time. The department shall do the following~~
40 ~~upon receipt of a written appeal:~~

1 (A) Within 30 days of receipt of the appeal, serve an accusation
2 upon the excluded person.

3 (B) Within 60 days of receipt of a notice of defense pursuant
4 to Section 11506 of the Government Code by the excluded person
5 to conduct a hearing on the accusation.

6 ~~(4) An order of immediate exclusion of the excluded person~~
7 ~~from the facility shall remain in effect until the hearing is~~
8 ~~completed and the director has made a final determination on the~~
9 ~~merits. However, the order of immediate exclusion shall be deemed~~
10 ~~vacated if the director fails to make a final determination on the~~
11 ~~merits within 60 days after the original hearing has been completed.~~

12 ~~(d) An excluded person who files a written appeal with the~~
13 ~~department pursuant to this section shall, as part of the written~~
14 ~~request, provide his or her current mailing address. The excluded~~
15 ~~person shall subsequently notify the department in writing of any~~
16 ~~change in mailing address, until the hearing process has been~~
17 ~~completed or terminated.~~

18 ~~(e) Hearings held pursuant to this section shall be conducted in~~
19 ~~accordance with Chapter 5 (commencing with Section 11500) of~~
20 ~~Division 3 of Title 2 of the Government Code. The standard of~~
21 ~~proof shall be the preponderance of the evidence and the burden~~
22 ~~of proof shall be on the department.~~

23 ~~(f) The department may institute or continue a disciplinary~~
24 ~~proceeding against a member of the board of directors, an executive~~
25 ~~director, or an officer of a licensee or an employee, prospective~~
26 ~~employee, or person who is not a client upon any ground provided~~
27 ~~by this section. The department may enter an order prohibiting~~
28 ~~any person from being a member of the board of directors, an~~
29 ~~executive director, or an officer of a licensee or prohibiting the~~
30 ~~excluded person's employment or presence in the facility, or~~
31 ~~otherwise take disciplinary action against the excluded person,~~
32 ~~notwithstanding any resignation, withdrawal of employment~~
33 ~~application, or change of duties by the excluded person, or any~~
34 ~~discharge, failure to hire, or reassignment of the excluded person~~
35 ~~by the licensee or that the excluded person no longer has contact~~
36 ~~with clients at the facility.~~

37 ~~(g) A licensee's failure to comply with the department's~~
38 ~~exclusion order after being notified of the order shall be grounds~~
39 ~~for disciplining the licensee pursuant to Section 1550.~~

1 ~~(h) (1) (A) In cases where the excluded person appealed the~~
2 ~~exclusion order, the person shall be prohibited from working in~~
3 ~~any facility or being licensed to operate any facility licensed by~~
4 ~~the department or from being a certified foster parent for the~~
5 ~~remainder of the excluded person's life, unless otherwise ordered~~
6 ~~by the department.~~

7 ~~(B) The excluded individual may petition for reinstatement one~~
8 ~~year after the effective date of the decision and order of the~~
9 ~~department upholding the exclusion order pursuant to Section~~
10 ~~11522 of the Government Code. The department shall provide the~~
11 ~~excluded person with a copy of Section 11522 of the Government~~
12 ~~Code with the decision and order.~~

13 ~~(2) (A) In cases where the department informed the excluded~~
14 ~~person of his or her right to appeal the exclusion order and the~~
15 ~~excluded person did not appeal the exclusion order, the person~~
16 ~~shall be prohibited from working in any facility or being licensed~~
17 ~~to operate any facility licensed by the department or from being a~~
18 ~~certified foster parent for the remainder of the excluded person's~~
19 ~~life, unless otherwise ordered by the department.~~

20 ~~(B) The excluded individual may petition for reinstatement after~~
21 ~~one year has elapsed from the date of the notification of the~~
22 ~~exclusion order pursuant to Section 11522 of the Government~~
23 ~~Code. The department shall provide the excluded person with a~~
24 ~~copy of Section 11522 of the Government Code with the exclusion~~
25 ~~order.~~